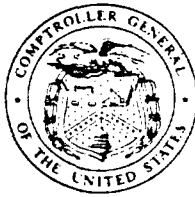


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186590

DATE: September 7, 1976

MATTER OF: Hendricks Printing Company

DIGEST:

1. Protest alleging that contractor is nonresponsible because of quality and delivery problems is not for consideration by our Office since GAO does not review contracting officer's affirmative responsibility determinations except for actions by procurement officials which are tantamount to fraud.
2. Protest alleging mistake in apparent low bid is not for consideration pursuant to GAO Bid Protest Procedures because contracting parties, not protester, must assert rights and bring forth all necessary evidence to resolve mistake in bid question.
3. Protest alleging buy-in is not for consideration since buy-in does not afford basis for rejecting bid.
4. Mathematically unbalanced bid may be accepted because invitation for bids' estimate of work requirements is reasonably accurate representation of actual anticipated needs based upon prior year's requirements.

Hendricks Printing Company (Hendricks) protests award to Martec Reproductions, Inc. (Martec), of a 1 year requirements contract for the production of two categories of technical manuals for the Department of the Navy under the Government Printing Office (GPO) Program 1935-S. The specifications required each bidder to submit prices for a large number of products and processes to satisfy the Navy's requirements for manuals during the contract term. Hendricks contends that the awardee should have been found nonresponsible or, alternatively, that its bid should have been rejected as nonresponsive because the pricing was so inconsistent as to suggest a mistake in bid or buy-in and was so unbalanced as to have failed to insure the Government of the lowest price.

Hendricks contends that the GPO should have found Martec nonresponsible based on an alleged history of quality and delivery

problems. However, our Office does not review bid protests involving agencies' affirmative determinations of responsibility, except for actions by procurement officials which are tantamount to fraud or for other reasons not applicable here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations of responsibility are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. In contrast, however, we do consider protests involving determinations of nonresponsibility to provide assurance to the rejected bidder against the arbitrary rejection of its bid.

Hendricks also contends that the pricing contained in Martec's bid was so inconsistent as to suggest the existence of a mistake in bid. In Engineering Research, Inc., B-187067, August 6, 1976, 76-2 CPD ___, we held that a protest alleging a mistake in an apparently low bid is not for consideration pursuant to our Bid Protest Procedures, 4 C.F.R. 20.1 et seq. (1976) because contracting parties, not the protester, must assert rights and bring forth evidence to resolve mistake in bid questions. While we indicated that we would refer appropriate cases to the contracting agency for possible verification, in the instant case, the GPO has sought and received written verification of Martec's bid.

Hendricks also contends that Martec's inconsistent pricing was an attempt to "buy-in" to the contract and that the bid should be rejected for that reason. However, we have held on a number of occasions that an allegation of a "buy-in" does not afford a basis for questioning the legality of an award. Harper Enterprises, B-184211, September 23, 1975, 75-2 CPD 173; Wexler Paper Products, B-179231, January 22, 1974, 74-1 CPD 23.

Finally, Hendricks contends that Martec's bid should be rejected as nonresponsive because it is unbalanced. In Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164, we held as follows (quoting from the syllabus):


"As a general rule, mathematically unbalanced bid--bid based on enhanced prices for some work and nominal prices for other work--may be accepted if agency, upon examination, believes invitation for bids' (IFB) estimate of work requirements is reasonably accurate

representation of actual anticipated needs. But where examination discloses that estimate is not reasonably accurate, proper course of action is to cancel IFB and resolicit, based upon revised estimate. * * *

In the instant case, it appears that Martec's bid is mathematically unbalanced. Consequently, the determinative question in ascertaining the propriety of the award to Martec is whether the solicitation's estimate of the work requirements is a reasonably accurate representation of actual anticipated needs.

In its response to this protest, the GPO contends that the estimated quantities contained in the solicitation are based on the prior year's production and reflect the requirements of the contract with reasonable accuracy. In Michael O'Connor, Inc., B-183381, July 6, 1976, 76-2 CPD ___, we held that, where an unsuccessful bidder made a prima facie case against the validity of the IFB's quantity estimates and neither the agency nor the awardee demonstrated that the estimates were reasonably accurate, the agency erred in making award to an apparently low priced, mathematically unbalanced bid. In the instant case, however, the protester has produced no evidence to indicate that the solicitation requirements inaccurately reflect the prior year's production or that reliance on these figures was not a reasonable basis on which to evaluate bids under the instant contract. Rather, the protester argues that, "according to information developed through independent research," the actual requirements under this contract will involve a purchase schedule under which "award to Hendricks will result in the lowest price to the government." Having presented nothing more specific than its own unsupported projection of the Government's needs, the protester has failed to make a prima facie case that the contracting officer's estimates were so unreasonable as to constitute an abuse of administrative discretion. See 54 Comp. Gen. 206, 209 (1974), 74-2 CPD 163. Consequently, the protester has not shown that acceptance of Martec's bid will fail to insure the Government of the lowest price for its requirements.

Accordingly, the protest is denied.

Acting  Comptroller General
of the United States